IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

MONDAY, THE 5TH FEBRUARY 2007 / 16TH MAGHA 1928

WP(C).No. 19027 of 2006(M)

PETITIONER:

U. PADMINI, HEADMISTRESS,
K.V.U.P.SCHOOL, KAKKDIPURAM,
ALANGODE P.O., VIA.EDAPPAL, MALAPPURAM DISTRICT.

BY ADV. SRI.K.JAJU BABU
SMT.M.U.VIJAYALAKSHMI

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY
THE SECRETARY TO GOVERNMENT, GENERAL EDUCATION
DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE DIRECTOR OF PUBLIC INSTRUCTION,
THIRUVANANTHAPURAM.

3. THE ASSISTNT EDUCATIONAL OFFICER,
EDAPPAL.

4. THE MANAGER, K.V.U.P. SCHOOL,
KAKKADIPURAM, ALANGODE P.O.,
EDAPPAL, MALAPPURAM DISTRICT.

ADDITIONAL RESPONDENTS

5. SMT.C.VALSALA, LPSA
K.V.U.P. SCHOOL, KAKKADIPPURAM
ALANGODE P.O., EDAPPAL
MALAPPURAM DISTRICT

R5 IS IMPLEADED VIDE ORDER DATED 14-08-06 IN I.A.NO.11368/06

BY ADV. SRI.SUDHEESH.A.
SMT.C.V.BINDU
GOVERNMENT PLEADER SMT.M.R.SREELATHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1	**TRUE COPY OF THE ORDER NO.DIS.C/2872/2004, DTD. 14-07-04 ISSUED BY THE THIRD RESPONDENT.**
EXT.P2	**COPY OF THE ORDER NO.SC-138/04-05/KKD DTD. 14-7-05 ISSUED BY R2**
EXT.P3	**COPY OF THE REVISION MEMORANDUM DATED 11-2-06 SUBMITTED BY THE PETITIONER BEFORE THE FIRST RESPONDENT.**
EXT.P4	**COPY OF THE COMMUNICATION 9526/B1/06/GE. DTD. 16-2-06 ISSUED BY R1**
EXT.P5	**TRUE COPY OF THE ARGUMENT NOTES SUBMITTED BY THE PETITIONER BEFORE THE FIRST RESPONDENT**
EXT.P6	**TRUE COPY OF THE G.O.(RT)NO.2199/06/G.EDN. DTD. 30-05-06 ISSUED BY R1**
EXT.P7	**TRUE COPY OF THE REPORT OF THE PETITIONER TO THE AEO, EDAPPAL.**
EXT.P8	**TRUE COPY OF LETTER DTD. 17-08-06 OF THE PETITIONER TO THE AEO, EDAPPAL.**
EXT.P9	**TRUE COPY OF APPEAL MEMORANDUM SUBMITTED BY THE PETITIONER BEFORE THE D.E.O., TIRUR**
EXT.P10	**TRUE COPY OF MEDICAL CERTIFICATES ISSUED TO THE PETITIONER BY DR.RAJESH SHANKAR IYER, EDAPPAL HOSPITAL(P) LTD.**
EXT.P11	**TRUE COPY OF MEDICAL CERTIFICATE ISSUED TO THE PETITIONER BY DR.S.RADHAKRISHNAN, PHC, THRIKKANAPURAM**
EXT.P12	**TRUE COPY OF ORDER DTD. 2-9-06 ISSUED BY R3**
EXT.P13	**TRUE COPY OF ORDER DTD. 11-8-98 ISSUED BY THE DIRECTOR OF PUBLIC INSTRUCTIONS, KERALA, TRIVANDRUM.**

THIRD RESPONDENT'S EXHIBITS

EXT.R3(A)	**TRUE COPY OF THE ORDER DTD. 10-07-06**

FOURTH RESPONDENT'S EXHIBITS

EXT.R4(A)	**COMMUNICATION DATED 15-10-05 ISSUED BY THE THIRD RESPONDENT.**
EXT.R4(B)	**MEMO OF CHARGES ISSUED ON THE PETITIONER DTD. 28-10-05**
EXT.R4(C)	**STATEMENT OF ALLEGATION ISSUED ON THE PETITIONER.**
EXT.R4(D)	**REPLY FILED BY THE PETITIONER.**
EXT.R4(E)	**ENQUIRY REPORT DED. 14-12-05**

EXT.R4(F) **SHOW CAUSE NOTICE TO THE PETITIONER.**

EXT.R4(G) **SANCTION ORDER ISSUED BY THE THIRD RESPONDENT.**

EXT.R4(H) **ORDER OF REVERSION ISSUED BY THE RESPONDENT.**

EXT.R4(I) **ORDER ISSUED BY THE FOURTH RESPONDENT.**

/True Copy/

PA to Judge.

K.M.JOSEPH, J.

W.P.(C).No.19027 OF 2006

Dated this the 1st day of March, 2007

JUDGMENT

Case of the petitioner in brief is as follows:

Petitioner is the Headmistress of an aided school. Staff fixation for the year 2004-05 was issued by the third respondent as per Ext.P1. A visit was conducted by the Super Check Cell, which resulted in abolition of two divisions and two posts. By Ext.P2 DPI after notice to the petitioner and others found that admissions of several students were bogus. He found that in fact the Headmistress removed the names of 50 students. It is further found that an analysis of absentees on the rolls of the school shows that they were bogus students but were kept on rolls by marking attendance for retaining required number of divisions during 2004-05 and many of them were not present on one-day strength verification also. It is further noted that Assistant Educational

Officer in his order has stated that many students whose name are on rolls of the school were actually studying in an unaided unrecognised English Medium school of the same locality. It is found that staff fixation for the year 2004-05 was obtained through fraud,misrepresentation and bogus and irregular admissions. It is found that Headmistress is responsible for the admission, removal and maintenance of school records and supervision of work of subordinates. It is the duty of the verifying officer to verify strength correctly and unearth irregularities.

2. Petitioner preferred Ext.P3 revision before the first respondent supported by Ext.P5 argument note. Ext.P6 is the order passed by the first respondent dismissing the revision. Petitioner challenges Exts.P2 and P6 orders.

3. I heard learned counsel for the petitioner Sri.Jaiju Babu, learned counsel for the Manager Smt.Bindu and learned Government Pleader also.

4. Learned counsel for the petitioner would submit that it

is a case where petitioner should not be blamed. He would submit that attendance of students are recorded by the teachers of the concerned standard and class teacher of standard I is the wife of the manager. He would further point out that attendance was physically verified by the third respondent on 18-10-2004 and 02-11-2004. It is stated at any rate that there is no reason for putting the entire blame for issuance of the staff fixation order on the petitioner. Individual cases of the pupils were not examined, it is stated. It is stated that according to Super check cell attendance was only 535 while the attendance recorded by the third respondent was 653. It is submitted that out of the 81 students, even now many are studying and one language teacher is also continuing. It is further pointed out that enquiry is also held under Rule 75 and punishment is imposed by the manager based on the order of the DPI.

5. Learned counsel for the petitioner Sri.Jaiju Babu also relied on the judgment of this court in **Vasudevan Namboodiri v.**

State of Kerala (1997(2)KLT 529), therein this the Single Jude inter-alia held as follows:

> " Now, I have to consider whether this power is available to the authorities under any other provisions of the Act. So far as the Headmaster is concerned, R.65 of Chap.XIV A, KER enables disciplinary action to be taken against the Headmaster. The same rule stipulates the penalty that can be imposed on the Headmaster. This includes recovery from pay of the whole or part of any pecuniary loss caused to the State Government by negligence or breach of orders. Thus, if in a disciplinary proceedings it is found that it was due to the negligence or breach of the Headmaster that the original order of staff strength was fixed by the D.E.O. then any such loss can be recovered from the Headmaster in such a proceedings. this strengthens the view I have taken earlier. So far as the Manager is concerned, even though there are many provisions under the K.E.R. compelling the Manager to obey the directions of the

> Government and also the consequences in cases of disobeyance, no provision has been brought to my notice which enables the Government to recover the loss from the Manager suffered by it on account of the wrong staff fixation. The only relevant rule is sub-r(4) of R.7 of Chap.III. It mentions the contingencies when the loss occasioned by the Government can be recovered."

The writ petitions in that case were filed by the manager and Headmaster and the writ petitions were allowed.

6. Learned Government Pleader on the other hand places reliance on the judgment of this court in **Beena v. State of Kerala** (2000(2)KLT 545), therein the Division Bench proceeded to hold as follows:

> "In the instant case, though the order is stated to have been issued under R.12E(3) read with R.16, the Director of Public Instruction was taking action against the school, especially the Headmaster for bogus admissions, fraud

and misrepresentation of facts consequent to which three divisions were happened to be sanctioned in the school by the District Educational Officer in Std.VIII. In cases where the Director finds that students' strength is shown by the school authorities after tampering with records, admission register, as well as misrepresenting facts, it is not incumbent on the Director to give 10% concession as provided in R.15A so as to validate those orders tainted with fraud as well as tampering of records. We are of the view that Legislature has never intended to validate a fraudulent act by school authorities giving concession under R.15A, as contended by counsel for the appellants. We are of the view that when the Director exercises his power under R.16 after getting a report of an officer authorised by the State Government, it is always open to the said Officer to take appropriate action against the school authorities. It is in exercise of the said power that the Director directed that the salary paid to

> appellants unauthorisedly should be recovered from the Headmaster. We are informed by counsel for the Headmaster that he has preferred an appeal against that portion of the order. We are not expressing any opinion with regard to the merits of the said appeal."

7. A perusal of Ext.P2 would show that the Super Check Cell noted a large number of bogus admissions. Para 17 of Ext.P2 reads as follows:

> "The Asst.Edl.Officer in his letter (9)cited has reported that loss has been sustained to Government due to irregular fixation of staff and payment of salary to teachers who worked against irregular division and posts. This loss is to be recovered from the Headmistress."

8. Ext.P2 has been confirmed in Ext.P6 order. In the light of the judgment of the Division Bench, I cannot say that action against the petitioner can be characterised as illegal or unauthorised. No doubt, learned counsel for the petitioner would contend that even assuming that petitioner is liable, the liability

should be apportioned between the petitioner and the manager. I do not think that petitioner can take this contention. Petitioner is responsible for the admissions, removal and maintenance of school records and supervision of the work of the subordinates as found by the DPI. Going by the provisions of the K.E.R. it is clear that a a very serious responsibility is cast on the Headmaster to see that admissions are genuine and there is no bogus admissions resorted to. The ultimate liability is with the pay master i.e. the Government to pay salary. Precious public funds cannot be allowed to be used for the payment of salary on the basis of bogus admissions.

9. In such circumstances, if the authority after finding that the admissions are bogus decides to proceed against the person primarily responsible under the rules, he cannot shrug off responsibility and contend that the order is bad for the reason that the liability is not apportioned between him and the manager. As far as the liability of the petitioner is concerned, I do not think it is

open to him to contend that it is in the region of any doubt. Therefore, I overrule the contention. In the nature of the finding rendered by the DPI I do not think it is open to the petitioner to challenge the finding that there were bogus admissions.

10. Learned counsel for the petitioner points out Ext.R4(h) which is an order of the manager on the basis of the enquiry held. He submits that petitioner has been visited with a punishment of reversion from the post of Headmaster to the post of U.P.S.A. permanently with lowest rank.

11. I make it clear that the proceedings initiated by the petitioner against Ext.R4(h) will be dealt with in accordance with law and untrammeled by this judgment.

12. Learned counsel for the petitioner submits that petitioner has filed Ext.P9 statutory appeal before the District Educational Officer.

13. There will be a direction to consider and take a decision on Ext.P9 appeal filed by the petitioner after hearing the petitioner

and the manager within a period of two months from the date of receipt of a copy of this judgment.

Subject to the above, the writ petition stands dismissed.

K.M.JOSEPH
JUDGE

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